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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/471,869	12/23/1999	JEFFREY PHILLIPS	E0295/7130-(8044

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EXAMINER

NGUYEN, CAM LINH T

ART UNIT	PAPER NUMBER
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2161

DATE MAILED: 07/14/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/471,869

Applicant(s)

PHILLIPS ET AL.

Examiner

CamLinh Nguyen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 May 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-8,10-15,17-19,21-24,26-42-44-45-47-51,57-58 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1, 3 - 8, 10 - 15, 17 - 19, 21 - 24, 40 - 42, 44 - 45, 47 - 51 is/are allowed.
- 6) ☒ Claim(s) 26-39,57 and 58 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

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DETAILED ACTION

Response to Amendment

1. This Office Action is response to communication filed on 5/5/2005.
2. Applicant's amendments to claims 26, 30, and 37 are acknowledged. Consequently, claims 1, 3 – 8, 10, 12 – 15, 17 – 19, 21 – 24, 26 – 42, 44 – 45, 47 – 51, and 57 – 58 are pending.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 26 - 27, 30, 37, 57 – 58, are rejected under 35 U.S.C. 102(e) as being anticipated by Gusler et al (U.S. 2002/0156965).

♦ As per claim 26, 30, 37, 53,

Gusler et al (U.S. 2002/0156965) discloses a computer system having at least first and second backup storage systems to each store backup data from at least one client (Fig. 2), the at least first and second backup storage systems storing different backup data, comprising:

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- “Receiving information related to backup activities of the second backup storage system at the first backup storage system” See Fig. 4, page 3, paragraphs 0037 – 0039. In particular:

- “First backup storage” corresponds to “backup file system 406” in client computer 402.
- “Second backup storage” corresponds to “backup image/seed file” 414 in the server 400.
- “Information related to backup activities” corresponds to the backup images or data that stored in the backup file system 406.
- “A first controller ... to receive information” corresponds to the “image collection processes 412”.

Gusler teaches that plurality of clients can be connected to a server (page 2, paragraph 0022).

Each client includes a local backup system (first storage) and the server corresponds to the second storage. Each server stores plurality of client data. Therefore, the second storage stores different data in comparing with the first storage system.

◆ As per claim 27, 57 – 58,

- “Transmitting the information related to the backup activities of the second backup storage system... to the first backup storage system” See Fig. 5, paragraphs 0041 - 43.

◆ As per claim 28 - 29, 31 – 32, 38 – 39,

The Gusler server can be situating on multiple domains via the multi-homing feature of TCP/IP, which includes a different client with respective backup storage. This client corresponds to the third backup storage system.

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- The multi-homing is a common practice for servers within the context of security (e.g. firewalls, portals, etc.), in which only system in the same domain can see data or receive data each other and cannot see or receive other data from different domain.

♦ As per claim 33 – 36,

As discussed above, the Gusler server can be situating on multiple domains via the multi-homing feature of TCP/IP, which included a different client with respective backup storage or apply the teaching of Satagopan into the invention. However, the domain that's not include this client can be acted as domain master and is used to stored client identifiers (paragraph 0036)

- "The domain master stores at least one second identifier ... one domain" See Fig. 1.
- "A second controller" corresponds to the components in the backup processes 404 of Fig. 1.
- "The domain master authorizes each controller to transmit the information... only within one domain (See Fig.5).

Allowable Subject Matter

5. Claims 1, 3 – 8, 10 – 15, 17 – 19, 21 – 24, 40 – 42, 44 – 45, 47 - 51 allowed.
6. The following is a statement of reasons for the indication of allowable subject matter: in independent claims 1, 7, 11, 12, 17, 22, 40, 44, 49, a backup method /system comprising first, second and third backup systems and at least one domain that includes at least first and second backup systems and excludes the third backup system, taken with the other limitations of the claim, were not disclosed by, would not have been obvious over, nor otherwise fairly disclosed by the prior art of record.

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7. The dependent claims, being further limiting, definite and fully enabled by the Specification, are also allowed.

Response to Arguments

8. Applicant's arguments filed 07/02/2004 have been fully considered but they are not persuasive in part.

♦ As per claims 26 – 27, 30, 37,

Applicant's argues that the Gusler fails to meet the limitations of amended claim 26 including: “the at least first and second backup storage systems storing different backup data”. The Examiner respectfully disagrees.

Gusler teaches that plurality of clients can be connected to a server (page 2, paragraph 0022).

Each client includes a local backup system (first storage) and the server corresponds to the second storage. Each server stores plurality of client data. Therefore, the second storage must store different data in comparing with the first storage system.

In addition, response to applicant's argument that the Gusler reference fails to meet the claim limitation in which Applicant amended in the preamble of the claim. A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963).

Conclusion

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to CamLinh Nguyen whose telephone number is (571) 272 - 4024. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Safet Metjahic can be reached on (571) 272 - 4023. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

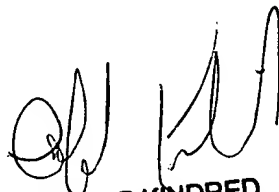
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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Nguyen, Cam-Linh

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ALFORD KINDRED
PRIMARY EXAMINER